

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
HERON COVE SHELLFISH FOR AN EXPERIMENTAL)	FINDINGS OF FACT,
AQUACULTURE LEASE LOCATED IN THE ST.)	CONCLUSIONS OF LAW,
GEORGE RIVER, CUSHING, KNOX COUNTY, MAINE)	AND DECISION

On May 1, 2000 Heron Cove Shellfish represented by the owner Robert Matus of Cushing, Maine applied for a limited-purpose, experimental commercial type, aquaculture lease totaling 0.426 acres in the coastal waters of the State of Maine, located on the west side of the St. George River, off the property of 61 Heron Cove Lane, Cushing, Knox County, Maine. The applicant requested the lease for a term of three years for the purpose of cultivating American oysters (Crassostrea virginica), hard clams (Mercenaria mercenaria), blue mussels (Mytilus edulis) and bay scallops (Argopecten irradians) using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a limited-purpose lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

As provided for in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on this application unless a hearing is requested in writing by five (5) or more interested parties. Notice of the application was published in the October 3, 2000 issue of the

Courier-Gazette newspaper. No requests for a hearing were received during the comment period established in 12 M.R.S.A. §6072-A(5).

Evidence Concerning the Nature and
Impact of the Proposed Lease

12 M.R.S.A. §6072-A(8) and the Department's regulations, Chapter 2.64(2), require the applicant, Heron Cove Shellfish, represented by the owner Robert Matus and hereafter referred to as the applicant, to provide an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to conduct commercial research and development on the viability of raising shellfish. The applicant requested the maximum lease term of three (3) years and 0.426 acres (371' x 50'). The proposed site is located adjacent to the applicant's shorefront property at 61 Heron Cove Lane on the west side of the St. George River, Cushing, Knox County, Maine. The applicant requests the authority to grow American oysters, hard clams, blue mussels and bay scallops using suspended culture techniques.

The proposed lease activities would consist of the suspended culture of shellfish. Several suspended culture techniques would be used throughout the water column. A 12' x 16' wooden float would be moored on the near shore (west) side and approximate center of the proposed lease. According to the application a float has been moored at the same location for the past fifteen years and previously used for lobster storage. The float would hold twenty 2' x 2' x 3' wire, 3" x 3" mesh cages. Each cage would hold 4 shelves and each shelf would hold one 18" x 30" ADPI mesh bag. There would be a maximum of 80 ADPI bags contained in 20 wire cages attached beneath the float. The mesh ADPI bags would contain the shellfish from seed size to harvest size. During the winter months the wire cages would be moored on the bottom in the deeper eastern portion of the proposed lease.

During the first year a $\frac{3}{4}$ " - 150' long-line would be moored parallel to the shore near the western boundary. Eight-foot long, $\frac{3}{8}$ " diameter, weighted drop lines would be hung every two feet along the long-line. The drop lines would be used to collect mussel spat from the water

column. A second 150' long-line would be deployed during the second and third year. The long lines would have 16" diameter floats for surface floatation and moored with ½" chain and 300-pound cement moorings on each end. The 12' x 16' float would also be moored at each corner with 300-pound cement moorings and 50' of ½" chain. The wire cages placed on the bottom during the winter months would be moored by removing the foam floatation and adding removable runners that hold bricks to add weight.

Approximately 30,000 American oysters, 1,000 hard clams, 1,000 bay scallops and 100,000 blue mussels would be raised. Blue mussel seed would be collected from what naturally settles on the long-line collectors. Seed shellfish would be obtained from nurseries sources and hatcheries located within Maine such as the Island Institute in St. George, Pemaquid Oyster Company, in Bremen, or Mook Sea Farm, Inc., located in Walpole.

Activities would include the transfer of seed in the mesh bags, maintenance and harvest of shellfish from the drop-lines or mesh bags as the shellfish grow. All transfer and harvest of shellfish would be done by hand.

The application describes the proposed lease area to have water depths of 3' to 20' at mean low water (MLW) with a tidal range of approximately 9'. The tidal current speed is described as 3-4 knots depending on the tide and parallels the shoreline. The bottom topography is flat on the shallow, near shore, western side and slopes sharply towards the eastern side and towards the channel. The area flora in the application was described as scarce. The local fauna included a limited number of lobster burrows and crabs.

The application describes seasonal lobster fishing in the channel east of the proposed lease. Lobster and recreational fishing and boating would be allowed on the proposed lease.

The proposed lease has 2 existing moorings that are owned and maintained by the applicant. If the lease were approved dragging the applicant requests that dragging be prohibited.¹

Jon Lewis, the Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit on October 17, 2000. The AEC indicated in his report that no moorings were observed within the vicinity of the proposed lease. The AEC qualified that observation by adding that moorings may not have been observed due to the time of the year when moorings may have been dropped for the year. The northwest and southwest corners would be approximately 300' from the western shore and approximately 1800' – 1500' between the northeast and southeast corners to the eastern shore of the St. George River. The AEC observed four lobster trap buoys within the south end of the proposed lease boundaries and approximately 100 trap buoys east of the proposed lease. According to the AEC's report the nearest public landing is the boat launch in South Thomaston approximately three miles to the north.

According to the AEC's report the proposed lease is located in water depths of 40' - 50' at mean low water (MLW) and located on the western edge of the main navigation channel. The western boundary of the proposed lease abuts mud flats. The AEC indicated that the location of the proposed lease should not impede navigation. Access to the proposed lease would be from the applicant's adjacent shoreline.

The AEC's report provided confirmation that the proposed lease falls within an area classified by the DMR as conditionally open to the harvest of shellfish.²

A memo dated October 18, 2000, from the Department of Inland Fisheries and Wildlife Regional Biologist indicated that the proposed lease would not cause a significant conflict with wildlife in the area.

I. _____

¹ Pursuant to 12 M.R.S.A. §6957, dragging is prohibited within 300' of the structures used for aquaculture if that area is marked in accordance with that statute.

² DMR regulations Chapter 95.05(F)(3), Area No. 27, St. George River, effective April 28, 2000.

The application included a letter from the local Marine Patrol Officer (MPO). He indicted that lobster fishing took place east of the proposed site and that the area has a limited amount of striped bass fishing and recreational boating.

Findings of Fact

The proposed 50' x 371' lease is located near the shore in water depths that range from 3' to 20' at MLW, which drops off quickly towards the channel. The applicant owns two moorings within the proposed lease boundaries. One float has been moored within in the proposed lease for the past 15 years. The proposed lease site is situated adjacent to the applicant's property located at 61 Heron Cove Lane in Cushing. Access to the proposed lease would be by boat from the applicant's adjacent shorefront property. This was confirmed in a site visit to the area by the Department's AEC on October 17, 2000. According to the AEC's report there is approximately 300' between the proposed lease boundary and shore across mud flats. No use of riparian lands other than the applicant's own property was requested or required. Robert A. and Sydne S. Matus provided written permission for riparian access to Heron Cove Shellfish for the proposed lease activities. Based on the evidence that there is adequate water depth and room for the riparian owners to access their shore, written permission from the applicant/riparian's for access and related aquaculture activities, and that there is no use of riparian property other than the applicant's, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located west of the main navigation channel of the St. George River and well south of Montgomery Point. According to the AEC's report, the location of the proposed lease is approximately 300' from the western shore and 1500' – 1800' from the eastern shore in water depths of 40' – 50'. In the AEC's opinion, the proposed lease would not interfere with navigation in the area. Based on the evidence that there is adequate room to navigate in the area, I find that the lease will not unreasonably interfere with navigation in the area.

The nearest existing aquaculture leases in this area are located approximately 1 ½ miles due south, on the opposite and east side of the St. George River south of Hawthorne Point and on the west side of the river in Broad Cove. The application indicated that commercial lobster fishing takes place in the vicinity of the proposed lease within the channel area. The DMR's Area Biologist and local MPO confirmed this. The AEC observed 100 trap buoys east of the proposed lease and the MPO indicated that lobster fishing took place east of the site. The AEC observed four trap buoys within the southern portion of the proposed lease boundaries. The applicant does not seek to prohibit lobster traps or navigation activity that would normally occur within the area. According to the AEC's report, the area is classified as "conditionally open" for the harvesting of shellfish. Based on the evidence that the nearest existing aquaculture leases are located over 1 ½ mile to the south, that lobster fishing is very limited within the proposed lease boundaries and would be allowed to continue within the lease boundaries, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

All American oysters, hard clams and bay scallops would be obtained from Maine hatchery sources. Blue mussels would be collected from the wild set that naturally occurs on the drop-lines deployed on the proposed lease as allowed by Department regulations. No evidence indicated that the proposed activities would cause any interference with the local flora and fauna. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The applicant indicated that only indigenous shellfish stocks of American oysters, hard clams and bay scallops obtained from hatcheries located within the State of Maine and blue mussels collected on the proposed lease would be used. Based on this evidence, I find that there is an available source of American oysters, hard clams, bay scallops and blue mussels.

According to the AEC's report, the proposed lease would be located over 1,000' from any public facility. The nearest public boat launch facility is located approximately three miles north in South Thomaston. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment and that the proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters, hard clams, bay scallops and blue mussels to be cultured for the lease site; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A.

§6072-A.

Decision

Based on the foregoing, the Commissioner grants the requested limited-purpose commercial lease of 0.426 acres to the applicant for a period of three (3) years from the date of this decision for the purposes of cultivating American oysters (Crassostrea virginica), hard

clams (Mercenaria mercenaria), blue mussels (Mytilus edulis) and bay scallops (Argopecten irradians) using suspended culture including bottom containment techniques. The applicant shall pay the State of Maine rent in the amount of \$50 per acre, per year. This lease shall be conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. lobster/crab and recreational fishing and navigation are allowed on the open areas of the lease;
2. the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources